

REICHHOLD ENERGY CORP.

IBLA 77-417

Decided March 29, 1979

Appeal from decision of the Oregon State Office, denying approval of assignment of oil and gas lease OR 13713 and declaring the lease terminated by operation of law.

Affirmed.

1. Oil and Gas Leases: Assignments or Transfers

A corporate applicant for assignment of an oil and gas lease must file statements required by 43 CFR 3102.4-1 with its application or, if already filed, so indicate by reference to the serial number of the Bureau of Land Management record in which such information is available.

2. Oil and Gas Leases: Assignments or Transfers—Oil and Gas Leases: Termination

Although deficiencies in an application for assignment of an oil and gas lease may be timely cured, 30 U.S.C. § 187a (1976) specifies the time when an assignment is effective, and no assignment can be approved for a terminated oil and gas lease.

3. Oil and Gas Leases: Relinquishments—Oil and Gas Leases: Termination

Upon failure of a lessee to pay full rental on or before the anniversary date of a lease, for any lease on which there is no well capable of producing oil or gas in paying quantities, the lease automatically terminates by operation of law, despite a partial payment submitted on the basis of a partial relinquishment which is not yet effective.

4. Oil and Gas Leases: Assignments or Transfers—Oil and Gas Leases:
Relinquishments

An oil and gas lease may be relinquished only by the record title holder, and a partial relinquishment is not effective if it is filed by an applicant for an assignment which has not been approved.

5. Oil and Gas Leases: Assignments or Transfers—Oil and Gas Leases:
Reinstatement—Oil and Gas Leases: Termination

Even if it were true that termination of an oil and gas lease was in part the result of Bureau of Land Management's failure to act timely on an assignment application, there is no authority either to withhold the effect of termination under 30 U.S.C. § 188(b) (1976) or to reinstate the lease under sec. 188(c), where there has been no payment of the full rental within 20 days after termination.

APPEARANCES: Peter J. Nickels and John R. Bolton, Esqs., Covington & Burling, Washington, D.C., for appellant.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Reichhold Energy Corporation has appealed from the May 16, 1977, decision of the Oregon State Office, Bureau of Land Management (BLM), denying approval of assignment of oil and gas lease OR 13713 and declaring the lease terminated by operation of law. The lease was issued to Faye S. Reuth on October 1, 1975, and an application to assign the lease to Reichhold was filed March 15, 1976. The assignment had not been approved by the anniversary date of the lease, but on September 28, 1976, Reichhold filed a partial relinquishment of certain lands in the lease along with a rental payment to cover the remainder.

The State Office ruled that the assignment application was incomplete because the assignee failed to furnish the address of its 100-percent shareholder, Reichhold Chemicals, Inc., as well as a statement by the parent company as to its holdings together with the statement required by 43 CFR 3102.4-1 of stockholders of the parent company. In concluding that the lease terminated, the State Office

held that the partial relinquishment was not effective because it was not filed by the lessee of record. Thus, because the full rental payment for the lease was not tendered, the lease terminated on October 1, 1976, by operation of law and was no longer available for assignment, even if the lessee could cure the defects in the application.

Appellant contends that the assignment application was not defective, stating that the information was readily available from it and that the absence of such information is not a basis for rejection of an assignment application. Appellant suggests that the requirements of the regulations were already met because the information needed had already been filed with the Securities and Exchange Commission. Further, if BLM had acted promptly on the assignment application, appellant would have been advised of the deficiencies to permit correction prior to the rental due date.

[1, 2] Under 43 CFR 3106.1-3, an applicant for an assignment is required to file "similar evidence and statements as that required of an offeror under Subpart 3102." For a corporate applicant, the statements required by 43 CFR 3102.4-1 must accompany the application unless they have already been filed with the BLM, in which event the application must indicate a reference by serial number to the record in which the information is available. Until filed, the assignment cannot be approved. 43 CFR 3106.1-2. Although these defects could be remedied by further filings, 30 U.S.C. § 187a (1976) specifies that the assignment "shall take effect" after the required documents are filed "in the proper land office." ^{1/} It is thus clear that the assignment was not effective at the time the partial relinquishment was filed nor when the rental payment was due. Albert DiGiulio, Jr., 26 IBLA 169 (1976); Amoco Production Co., 16 IBLA 215 (1974); W. R. Murfin, 13 IBLA 97 (1973). Although 30 U.S.C. § 187a (1976) and 43 CFR 3106.3-3 provide that the effective date of an assignment is the first day of the month following the date of filing an assignment application, this is expressly made subject to the approval of the assignment by the Department so that the assignee does not automatically become substituted as the holder of record title. Furthermore, 30 U.S.C. § 187a (1976) also states: "Until such approval, however, the assignor or sublessor and his surety shall continue to be responsible for the performance of any and all obligations as if no assignment or sublease had been executed." Because the assignment is thus

^{1/} Because of the particular wording of the statute, wherein Congress has spelled out the effective date of the assignment, it is not possible to apply the Departmental latitude described in El Paso Brick Co. v. McKnight, 233 U.S. 250 (1913), and Stock Oil Company, 40 L.D. 198 (1911). 2A Sands, Sutherland Statutory Construction at 423 (4th ed. 1973).

contingent upon Departmental approval, neither the statutory or regulatory provisions as to the effective date mean that an assignment automatically becomes effective for all purposes on the first day of the month after filing or that the Department is estopped from disapproving an application after that date. The assignor, therefore, remains record title holder until the assignment is approved. See Oasis Oil Co. v. Bell Oil & Gas Co., 106 F. Supp. 954, 957 (W.D. Okla., 1952).

[3] The resolution of this appeal turns on whether the State Office correctly decided that the lease had terminated. The applicable statute, 30 U.S.C. § 188(b) (1976), provides that "upon failure of a lessee to pay rental on or before the anniversary date of a lease, for any lease on which there is no well capable of producing oil or gas in paying quantities, the lease shall automatically terminate by operation of law * * *." Appellant's payment can be considered sufficient only if its partial relinquishment of the land in the lease was effective; if the relinquishment was not effective, the rental payment fell short of the nominal deficiency which would except a lease from the termination provision.

[4] We have been able to determine no basis for concluding that appellant's relinquishment was effective. Departmental regulation 43 CFR 3108.1, which provides that a lease may be relinquished only by the record title holder, cannot be construed to include as record title holder an applicant for an assignment which has not yet been approved. Solicitor's Opinion, Refund of Rentals Paid under Oil and Gas Lease, M-36096 (August 16, 1951); Vivian James, A-26208 (June 29, 1951); see Glen E. Peters, A-26265 (May 27, 1952).

[5] Appellant's argument that the deficiencies were caused by BLM's failure to act timely on the application provides no authority to withhold the effect of termination under 30 U.S.C. § 188(b) (1970), which automatically devolved upon the lease by operation of law and not by the action of any Government official. ^{2/} Under 30 U.S.C. § 188(c) (1976), the Department has limited authority to reinstate terminated leases, but only where full payment has been made within 20 days after the termination date. Albert DiGiulio, Jr., *supra*. Unfortunately, there has been no petition for reinstatement from the lessee, and no payment of the full rental within the required period.

^{2/} It is unfortunate for appellant, in view of its investment in the lease, that it did not fulfill its responsibility of obtaining the lessee's signature on the relinquishment before filing, as the assignment had not been approved.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joseph W. Goss
Administrative Judge

We concur.

Frederick Fishman
Administrative Judge

Joan B. Thompson
Administrative Judge

